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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,448	04/08/2004	Roberta Masini	1014.1032	1333
41226	7590	05/12/2006	EXAMINER	
POLLACK, P.C. THE CHRYSLER BUILDING 132 EAST 43RD STREET, SUITE 760 NEW YORK, NY 10017			GUIDOTTI, LAURA COLE	
			ART UNIT	PAPER NUMBER
			1744	

DATE MAILED: 05/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/821,448

Applicant(s)

MASINI, ROBERTA

Examiner

Laura C. Guidotti

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
1. Claims 1-5 and 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Briggs, USPN 1,092,014 in view of Gekhter et al., USPN 5,488,751.

Briggs discloses the claimed invention including a handle (1) mounting a toothbrush (28), the brush being integral with a support (14) rotatably joined to the handle (via 11, 12, or 13; see Figures) so that tilting of the brush relative to the axis of the handle can be adjusted (Page 1 Column 1 Lines 8-16), the toothbrush being further provided with a lock (portion having to do with 21, Page 1 Lines 102-107). The support has a pin traverse to the axis of the brush (13) for rotatable engagement with a seat at an end of the handle (see Figures). There are parallel, ring-shaped expansions (11) each defining a relatively circular seat (see Figures 4-5) and are formed in the end of

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the handle and are relatively parallel to one end of the handle (see Figures 4-5 particularly). The diameter of the seat appears to be substantially equal to the diameter of the pin (see Figure 10). The transverse pin is provided at the other end of the brush (see Figures 1-2). Briggs discloses a toothbrush, however not a toothbrush that is specifically a wire brush. Briggs further includes connectable half portions (2 and 3), each of the portions terminating with one of the ring-shape expansions (11; see Figures 4-5) and being rotatably joined to one another at opposing ends (see Figures), a protrusion (8) being formed on one of the halves (3) for engaging in a corresponding cavity (9) formed correspondingly in the other portion (2), so when applying relatively moderate force thereto so that the portions are joined to one another (Page 1 Lines 52-68).

Gekhter et al. disclose an interdental toothbrush that is a wire brush (14) for cleaning between teeth and also the upper brush support section is rotatably joined to the handle (see Figure 7; Column 5 Lines 44-47).

It would have been obvious for one of ordinary skill in the art to substitute the flat toothbrush portion of Briggs for a wire brush, as Gekhter et al. teach, as an alternative type of toothbrush that is also beneficial for cleaning between teeth.

2. Claims 1-5 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over de La Tour, USPN 4,731,896 in view of Gekhter et al., USPN 5,488,751.

de La Tour discloses the claimed invention including a handle (5) mounting a toothbrush (31), the brush being integral with a support (3) rotatably joined to the handle (Column 2 Lines 57-59) so that tilting of the brush relative to an axis of the handle can

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be adjusted (see Figure 2), the toothbrush being further provided with a "lock" (Column 3 Lines 36-39, Column 4 Lines 32-39). The support has a pin traverse to the axis of the brush (23, 84, or 140) for rotatable engagement with a seat at an end of the handle (see Figures). There are parallel, ring-shaped expansions (10,12 or 80,82 or 136,137) each defining a relatively circular seat (see Figures) and are formed in the end of the handle and are relatively parallel to one end of the handle (see Figures 1-2 particularly). The diameter of the seat appears to be substantially equal to the diameter of the pin (see Figures). The transverse pin is provided at the other end of the brush (see Figures 1-2). de La Tour discloses a toothbrush, however not a toothbrush that is specifically a wire brush.

Gekhter et al. disclose an interdental toothbrush that is a wire brush (14) for cleaning between teeth and also the upper brush support section is rotatably joined to the handle (see Figure 7; Column 5 Lines 44-47).

It would have been obvious for one of ordinary skill in the art to substitute the flat toothbrush portion of de La Tour for a wire brush, as Gekhter et al. teach, as an alternative type of toothbrush that is also beneficial for cleaning between teeth.

3. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rocco, USPN 5,581,838 in view of Gekhter et al., USPN 5,488,751.

Rocco discloses the claimed invention including a handle (12) mounting a toothbrush (26), the brush being integral with a support (20) rotatably joined to the handle (via 30) so that tilting of the brush relative to an axis of the handle can be adjusted (see Figures, Abstract), the toothbrush being further provided with a "lock"

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(Column 4 Lines 50-57). The support has a pin traverse to the axis of the brush (38) for rotatable engagement with a seat at an end of the handle (see Figures). There are parallel, ring-shaped expansions (16, 18) each defining a *relatively* circular seat (see Figures) and are formed in the end of the handle and are relatively parallel to one end of the handle (see Figure 4 particularly). The diameter of the seat appears to be substantially equal to the diameter of the pin (see Figures). The lock comprises at least one radial tooth formed on the pin (on sprockets 42, 44) and a plurality of cavities formed on a surface delimiting the seat for engaging the tooth (66 or 68; Column 4 Lines 41-43), the cavities being spaced angularly relative to one another (see Figure 4), so that the brush is lockable at a selected angle (Column 4 Lines 50-65). The transverse pin is provided at the other end of the brush (see Figure 4). Rocco discloses a toothbrush, however not a toothbrush that is specifically a wire brush.

Gekhter et al. disclose an interdental toothbrush that is a wire brush (14) for cleaning between teeth and also the upper brush support section is rotatably joined to the handle (see Figure 7; Column 5 Lines 44-47).

It would have been obvious for one of ordinary skill in the art to substitute the flat toothbrush portion of Rocco for a wire brush, as Gekhter et al. teach, as an alternative type of toothbrush that is also beneficial for cleaning between teeth.

Applicants Arguments

4. In the response filed 22 February 2006, the Applicant contends that:

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A. In 1912, the date of Briggs, the interdental toothbrush had not yet been developed and Briggs does not disclose or suggest the application of the toothbrush head to a modern interdental type toothbrush.

B. Briggs refers to adjustment of a brush holder in two positions only and there is no disclosure or suggestion of tilting the brush head, nor a lock for securing a support at a selected angle of tilt.

C. Gekhter et al. is disadvantageous in reducing the effective length of the toothbrush that has to be grasped by the users fingers making it difficult to maintain the desired angle of tilt. There is no suggestion of motivation in any of the cited references to the twisted wire brush of Gekhter et al. as applicable to Applicant's wire brush arrangement.

D. Rocco provides no disclosure or any suggestion of an interdental type of toothbrush.

Response to Arguments

5. Applicant's arguments filed 22 February 2006 have been fully considered but they are not persuasive.

A. In response to applicant's argument based upon the age of the references, contentions that the reference patents are old are not impressive absent a showing that the art tried and failed to solve the same problem notwithstanding its presumed knowledge of the references. See *In re Wright*, 569 F.2d 1124, 193 USPQ 332 (CCPA 1977).

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B. Briggs does in fact disclose tilting the brush head. Page 1 Column 1 Lines 8-16 includes the recitation that "...for its primary object the provision of means for supporting the brush head *at any desired angle* relatively to the handle..." Also Briggs includes a lock for securing the support at a selected angle with respect to the handle axis (the lock being the portion 21 which interacts with recesses 18 and 19; Page 1 Lines 102-107). As mentioned previously, Briggs has a brush integral with a support rotatably joined to the handle such that tilting of the brush relative to an axis of the handle *can be and is capable of* being adjusted, the toothbrush being further provided with a lock securing the support at a selected angle with respect to the handle axis.

C. As mentioned above, Gekhter et al. teaches an interdental toothbrush that also includes a support rotatably joined to the handle such that tilting of the brush relative an axis of the handle can be adjusted (Column 5 Lines 44-47; Figure 7). Based on this teaching, it would have been obvious for one of ordinary skill in the art to substitute the flat toothbrush portion of Briggs for a wire brush, as Gekhter et al. teach, as an alternative type of toothbrush that is also beneficial for cleaning between teeth. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., effective length of the toothbrush) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

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D. In response to applicant's argument that there is no suggestion to combine the references including Rocco, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it would have been obvious for one of ordinary skill in the art to substitute the flat toothbrush portion of Rocco for a wire brush, as Gekhter et al. teach, as an alternative type of toothbrush that is also beneficial for cleaning between teeth.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Guidotti whose telephone number is (571) 272-1272. The examiner can normally be reached on Monday-Thursday, 7:30am - 5pm, alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys Corcoran can be reached on (571) 272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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